

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4873 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABHAI K HARIJAN

Versus

CHAIRMAN

Appearance:

MR NILESH A PANDYA for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for appropriate writ, order or direction directing the Gujarat Electricity Board to absorb the petitioner by treating him as a permanent employee from the date he completed 940 days continuous service together, with all

consequential benefits as available to a permanent employees similarly situated to that of the petitioner.

2. The case of the petitioner was that he was working with the respondent Board at Asoad Sub-station as a Sweeper, Class-IV employee. As per his assertion, in the year 1982, after completion of one and half year's service, he was terminated. Since the said action was illegal and contrary to law, he raised an industrial dispute and the matter was referred to the Labour Court, Vadodara under Sec.10(1)(C) of the Industrial Disputes Act, 1947. After hearing the parties, the reference was decided in favour of the petitioner and by award dtd. June 16, 1988, the Gujarat Electricity Board, Vadodara was ordered to reinstate the petitioner by treating him in continuous service and by paying him full back wages. It was stated by the petitioner in the petition that in pursuance of the award passed by the Labour Court, Vadodara, he was reinstated in service with continuity of service. He, therefore, submitted that for all practical purposes, his services was required to be treated as continuous service. The petitioner then stated that as per the Board's Circular No.446 dtd.14th February, 1985, he was required to be made permanent. The said Circular provides that those employees who have put in 240 days continuous service as on 1st April, 1983 or on the date subsequent thereto, shall be deemed in regular establishment and would be entitled to being on that basis. Again by the another Circular dtd.19th September, 1985, it was clarified that for the purpose of computing the continuous service as defined under Sec. 25(b) of the I.D. Act or while computing 960 days by aggregating continuous service, weekly off days from 1st April, 1983 will also be counted. According to the petitioner, since he had completed one and half year's service in May, 1982, when his services were terminated, obviously, he had completed more than one year's service as on 1st April, 1983. It was submitted that when the action terminating the service of the petitioner was found to be illegal by the Labour Court, Baroda and he was ordered to be reinstated and actually reinstated by granting him benefits of continuation of service as also full backwages, it was obligatory on the part of the respondent Board to grant benefits on the basis of above two Circulars. Since it was not done, the petitioner was constrained to approach this Court. Rule was issued as early as on 13th July, 1989. Though served, nobody appeared on behalf of the respondent Board.

3. From the documentary evidence placed on record in the form of Award passed by the Labour Court, Baroda, as

also averments made in the petition, it is clear that the petitioner was working with the Board prior to about one and half year in May, 1982. His case before the Labour Court was that in May, 1982 when his services were terminated, he had worked for about one and half year. The said story was believed and Award was passed in his favour and reinstatement with full backwages was granted. Hence it will have to be held that he had completed about one and half year in 1982. Obviously, therefore, his case is covered by the establishment Circular No.446 dtd.14th February, 1985 as also clarificatory Circular dtd.19th September, 1985. Since he is covered by the above Circulars, obviously, he would be entitled to the prayers made in the petition. The petition is, therefore, allowed. The respondent Board is directed to treat the petitioner as a permanent employee and it is further directed to the respondent Board to extend all benefits in accordance with the establishment Circular No.446 dtd. 14th February, 1985, as also Circular dtd.19th September, 1985. Rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs.

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